

approximately 175,000 CDV customers. These customers are served entirely via Comcast-owned network facilities, as Comcast does not rely on any Qwest wholesale network elements to provision its telephone services.

15. Comcast has invested more than \$400 million to improve its Denver-area network in preparation for anticipated growth.³⁰ On September 19 2006, Comcast announced that it would be adding more than 500 new Colorado jobs (in addition to the 200 technician and customer service positions Comcast announced earlier in 2006) with the creation of customer service centers in Centennial (Denver MSA) and Colorado Springs.’ Comcast stated that this would allow it “to keep pace with the increasing popularity of its bundled package of cable TV, high-speed Internet and digital voice service.”³² With the addition of these 500 new positions, Comcast’s Colorado workforce will grow to about 4,500 employees.³³

16. Comcast’s CDV offering has been growing rapidly on a national basis, and this growth is accelerating. In 2006, Comcast senior leadership expressed highly optimistic prospects for growth in its digital voice telephone operations over the next three years. John Alchin, co-Chief Financial Officer for Comcast stated

³⁰ <http://denver.bizjournals.com/denver/stories/2006/04/10/story8.html>. See Exhibit 1, Page 10.

³¹ http://www.rockymountainnews.com/drmn/tech/article/0,2777,DRMN_23910_5003710,0. See Exhibit 1, Page 12.

³² *Id.*

³³ *Id.*

"In that time frame, it is entirely conceivable and even probable that we could add 10 million phone customers."³⁴

In September 2006, Comcast reported that it was expecting to add 1.3 million to 1.4 million digital phone customers nationally for the year versus the 1 million additions it had previously estimated.³⁵ However, Comcast's success with its Digital Voice product in 2006 actually *exceeded* these projections; Comcast added over **1.5 million** digital phone customers for the year.³⁶

According to its Fourth Quarter 2006 Report, Comcast has a nationwide subscriber base of 2.5 million telephone subscribers, with 1.86 million CDV subscribers and 652,000 circuit switched telephone customers.³⁷ Comcast reported rapidly accelerating CDV growth throughout 2006. Following growth of 232,000 subscribers in the first quarter, 326,000 subscribers in the second quarter, and 483,000 subscribers in the third quarter, Comcast added 508,000 CDV customers in the fourth quarter of 2006.³⁸ In describing Comcast's 2006 performance, Chairman and CEO Brian Roberts proclaimed:

"2006 was simply our best year ever. Powered by our triple play offering and superior product;, we added more RGUs [i.e., revenue-generating units] than at any other time in our history and reported terrific growth in cable revenue and Operating Cash Flow. This record-setting performance

³⁴ <http://www.marketwatch.com/news/story/comcast-confident-cable-phone-war/story.aspx?guid={F8C09A0C-9A88-4057-AD62-3917AB81D79F}>. See Exhibit 1, Page 13.

³⁵ <http://www.multichannel.com/article/CA6374497.html>. See Exhibit 1, Page 15.

³⁶ *Comcast Reports 2006 Results and Outlook for 2007, Announces 3-for-2 Stock Split*. Press Release issued February, 1, 2007, Table 6. See Exhibit 1, Page 19.

³⁷ *Id.*

³⁸ Citigroup Entertainment, Media and Telecommunications Conference, Presentation of Comcast, January 9, 2007; page 11; see: <http://www.veracast.com/webcasts/citigroup/emt07/05103689.cfm>. See Exhibit 1, Page 34.

demonstrates substantial operating momentum, and we could not be more enthusiastic about the future.”³⁹

By year end 2007, Comcast plans to have CDV service available to 40 million homes nationally, and projects that it will provide CDV to 8 million—or 20%—of these customers by 2009.⁴⁰ Comcast has reported that the company's Digital Voice service was driving the adoption of other products, with 80% of its CDV customers also purchasing cable and high speed internet.”

17. Comcast currently offers its CDV service, which is provided via VoIP technology,⁴² to residential customers served via the Comcast network at a standard price of \$39.95 for customers already subscribing to Comcast cable television and high speed internet service. For customers with either Comcast cable television service or high speed internet service, Comcast prices its CDV service at \$44.95 per month. If the customer wishes to subscribe only to CDV service, Comcast's monthly rate for the service is \$54.95. Comcast Digital Voice service includes unlimited local and long distance calling (including free long distance calls to Canada) plus 12 standard calling features.⁴³ Comcast has also been aggressively promoting its "triple play" bundle of Comcast Digital Cable, Comcast High-speed Internet and Comcast Digital Voice throughout the Denver area for

³⁹ Comcast Reports 2006 Results and Outlook for 2007, Announces 3-for-2 Stock Split. Press Release issued February 1, 2007. Page 1. See Exhibit 1, Page 19.

⁴⁰ Citigroup Entertainment, Media and Telecommunications Conference. Presentation of Comcast, January 9, 2007; page 11; see: <http://www.comcast.com/webcasts/citigroup/emt07/05103689.cfm>. See Exhibit 1, Page 34.

⁴¹ *Id.*

⁴² While Comcast uses VoIP technology to provide telephone service, it is provided over Comcast's coaxial loop network. Comcast telephone service is not offered to any customer that obtains a broadband connection from a provider other than Comcast.

⁴³ See Exhibit 1, Page 53.

the past several months. Comcast's promotional rate for this bundled package is \$99.00/month for 12 months, after which time the price increases to \$132.59.⁴⁴ More recently, Comcast has used direct mail advertising in the Denver area to offer its CDV service at a price of \$19.99/month for 6 months, with free installation.⁴⁵ This particular promotion appears to be targeted to select customers, and is offered on a limited-time basis.

18. While Comcast has traditionally marketed its services to residential customers, this focus is now expanding. Comcast recently announced that its "next great business opportunity" is to sell internet, voice and video services to small and medium sized businesses.⁴⁶ On August 7, 2006, Comcast announced the appointment of Mr. William Stemper as president of Comcast Business Services. In announcing Mr. Stemper's appointment, Dave Watson, Executive Vice President of Operations for Comcast stated:

I'm thrilled that he will lead Comcast's continued efforts as we leverage our unparalleled network to deliver video, voice and data services for the business marketplace.⁴⁷

Comcast states that its target is to capture 20% of the business phone market in five years, resulting in \$12 to \$15 billion in additional revenues. Comcast also announced

⁴⁴ <http://www.comcast.com/shop/buyflow/default.ashx>. See Exhibit 1, Page 51.

⁴⁵ See Exhibit I, Page 61

⁴⁶ Comcast defines this market as businesses with less than 20 employees.

⁴⁷ http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsarticle_pf&ID=892959. See Exhibit I, Page 63.

that it would invest \$250 million in 2007 and \$3 billion over five years to serve these business customers.⁴⁸

On March 21, 2007, Comcast announced the opening of call center in Centennial, Colorado, that will serve as “one of two facilities nationwide dedicated to the company’s small business clientele.”⁴⁹ According to Comcast, the center will initially be staffed with 100 employees, with room to expand to 400 employees.⁵⁰ In making this announcement, Jim Erickson, Comcast’s vice president of business services for the west division stated:

The Centennial office will play an integral part in the nation’s largest cable company’s plans to offer a bundle of phone, Internet and video services to the estimated 5 million small businesses in its territory. Comcast already offers Internet and pay TV to businesses but will ramp up efforts when it launches phone service later this year.”

In the meantime, as announced in June 2006, Comcast has already been arranging for its Denver-area business customers to be able to receive digital voice services through its strategic cross-marketing arrangement with Greenwood Village-based IP5280 Communications (a VoIP services provider).⁵² This arrangement calls for Comcast to refer business customers interested in VoIP to IP5280, which in turn will refer its

⁴⁸ Citigroup Entertainment, Media and Telecommunications Conference, Presentation of Comcast, January 9, 2007, pages 12-13: <http://www.veracast.com/webcasts/citigroup/emt07/05103689.cf>. See Exhibit 1, Page 34. Also, see “Comcast CEO says next target is businesses.” Philadelphia Inquirer, January 11, 2007. See Exhibit 1, Page 64.

⁴⁹ http://www.rockymountainnews.com/drmn/tech/article/0,2777,DRMN_23910_5431464,00.html. See Exhibit 1, Page 65.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² http://denver.bizjournals.com/denver/stories/2006/06/26/story7.html?ist=s_cn_hl. See Exhibit 1, Page 66.

customers to Comcast's data services. IP5280 acknowledged the deal was "a temporary stopgap before Comcast introduces its own VoIP offering for businesses."⁵³

19. Finally, Comcast and other cable providers are now moving into the wireless market. Comcast, along with Time Warner Cable, Cox Communications and Advanced Newhouse are involved in a joint venture with Sprint Nextel to provide integrated mobile phone service to their cable customers.⁵⁴ Comcast began offering the Sprint Nextel wireless service in Boston and Portland in 2006, and plans to expand to other areas in 2007 (Comcast has not yet publicly revealed its wireless implementation plan for the Denver MSA).⁵⁵ This arrangement allows Comcast to fill a gap in its product portfolio, and will enable Comcast to offer the "quadruple play" bundle of services to customers, consisting of video, broadband internet access, digital telephone and wireless service. Since customers clearly prefer one-stop shopping for their communications services, this arrangement is a tool for Comcast to drive up penetration rates for all services in the bundle.

Comcast sees mobility as a way to add more convenience and value to its customer base. In an article on C/Net, Tom Nagel, senior vice president and general manager for wireless at Comcast, stated "There is no question that wireless ties all of our services together. The idea is you can take the services you enjoy at home with you when you're on the go using

⁵³ *Id.*

⁵⁴ See: http://news.com.com/2100-1039_3-6147061.html. See Exhibit I, Page 68.

⁵⁵ See: http://biz.yahoo.com/indie/061130/458_id.html?v=1&printer=1. See Exhibit I, Page 70.

a mobile device.”⁵⁶ According to this article, Comcast’s initial launch “will allow customers to access their e-mail, cable TV guide and home voice mail from their cell phones. They’ll offer some video content on their phones that would otherwise be available only at home. Eventually, the cable companies want to allow customers to be able to do things like program their DVRs remotely from their handsets.”

20. Independent industry analysts identify ILEC access line losses to cable telephony providers as significant and continuing. For example, Fitch Ratings states:

The competitive impacts of technological change remained intense, as expected, in 2006 and this should continue in 2007. Cable multiple system operators (MSOs) have aggressively rolled out digital telephony services using voice over Internet protocol (VoIP) technology that has increased retail access line erosion of incumbent local exchange carriers (ILECs). The scale of this erosion, which is expected to reach a total of approximately 6 million, representing cable telephony net additions in 2006 of more than 3 million, has increased with the widespread availability of cable telephony and its associated multi-service bundles.”

Like the majority of cable MSOs, Comcast has deployed VoIP technology to support continued growth in its digital telephone market segment. Light Reading (an industry analyst) states:

North American cable operators are now signing up an average of about 11,000 new customers a day for IP phone service, up from 9,900 customers per day in the first quarter. Although impressive, that’s not too surprising given that all three of the biggest cable IP phone players - Time Warner Cable, Cablevision Systems and Comcast - are now signing up close to 10,000 or more subscribers every week.⁵⁹

⁵⁶ See: http://news.com.com/2100-1039_3-6147061.html. See Exhibit 1, Page 68

⁵⁷ *Id.*

⁵⁸ Regulatory Event **Risk** Headlines Fitch’s U.S. Telecom Outlook for 2007, November 29, 2006. See Exhibit 1, Page 72.

⁵⁹ http://www.lightreading.com/document.asp?doc_id=108862&print=true. See Exhibit 1, Page 80

Clearly, Comcast and other cable service providers see the provision of telephone service as a key ingredient in their strategy to expand the customer base and improve revenue streams by driving up the number of customers purchasing multiple services in addition to basic cable television service.

III. CLECs

21. In addition to Comcast, as of December 31, 2006 there are over [REDACTED] unaffiliated CLECs currently offering telephone services in competition with Qwest in the Denver MSA. Of these CLECs, [REDACTED] are providing service to customers via their own non-Qwest network facilities, [REDACTED] are providing service utilizing UNE Loops, [REDACTED] are providing service using the Qwest Platform Plus (“QPP”)⁶⁰ finished wholesale service and [REDACTED] are reselling Qwest retail services.⁶¹ It is important to note that CLECs utilizing non-Qwest network facilities, QPP/QLSP and/or resale *are not reliant upon Qwest UNEs* to provide service to their customers.

22. CLECs are utilizing Qwest wholesale services to compete with Qwest in every wire center in the Denver MSA. Highly Confidential Exhibit 2 shows the distribution of Qwest wholesale services purchased by CLECs in each wire center as of December 2006, segmented by residential and business line categories. Since Qwest has no means of

⁶⁰ Qwest Local Services Platform (“QLSP”) is the Qwest wholesale service that replaces QPP service as Qwest/CLEC QPP commercial agreements expire. Qwest signed QLSP agreements with several CLECs in late 2006 and early 2007. However, based on these agreements, the conversion of QPP lines to QLSP lines began after January 1, 2007. Thus, Qwest’s December 2006 wholesale in-service tracking data includes QPP lines, but not QLSP lines.

⁶¹ Qwest wholesale tracking systems, December 2006.

determining the type of retail service CLECs provide to end users when they purchase stand-alone⁶² UNE-L and Enhanced Extended Loop (“EEL”) services, these wholesale services are attributed to the “business” category in this summary.⁶³ It is important to note that the data in Highly Confidential Exhibit 2 excludes any CLEC access lines served via: (1) CLEC-owned loop and switching network facilities, (2) Special Access service purchased from Qwest, or (3) network facilities leased from non-Qwest providers, and therefore represents only a subset of CLEC lines in service in the Denver MSA.

23. To the extent CLECs are utilizing their own networks to serve residential and business customers in the Denver MSA, Qwest has no means to obtain precise in-service access line counts. However, Qwest does track the number of white pages listings, by rate center, for CLECs that are “facilities-based” (those utilizing CLEC-owned switches and loops, such as Comcast, and/or those utilizing CLEC-owned switches and unbundled loops or Special Access services purchased from Qwest), and Qwest can use this information to estimate the number of lines served by such CLECs.⁶⁴ Based on white pages listings data as of January 2007, there are approximately [REDACTED] business lines and [REDACTED] residential lines associated with facilities-based CLECs in the Denver MSA rate centers. Following is a brief overview of several CLECs now serving the Denver MSA, with particular emphasis on CLECs that utilize their own facilities.

⁶² In this context, “stand-alone” means UNE-L that is not purchased in conjunction with QPP or QLSP service

⁶³ The bulk of UNE Loops are purchased by CLECs that market their services almost exclusively to business customers. Thus, it is reasonable to attribute UNE Loops to the business category.

⁶⁴ About 75% of Qwest’s residential lines and 36% of its business lines are listed in the white pages directories. Qwest assumes the CLECs’ customer bases will have similar listings per line ratios, and estimates facilities-based CLEC lines on this basis. Note that business customers often elect to list only their primary telephone number in the white pages directory, so that there are significantly more business lines than business white pages listings. To the extent customers of facilities-based CLECs do not request that their telephone numbers be included in the Qwest white pages listings database, these telephone numbers are not reflected in the facilities-based CLEC customer white pages listings at all.

24. AT&T, the largest telecom company in the U.S., offers a wide range of telecommunications services to all classes of residential, small business and enterprise business customers in the Denver MSA. According to its website, AT&T provides solutions designed to meet all personal communications needs (at home and on the go) as well as the needs of small, medium, large and global businesses and governmental entities. AT&T provides services throughout the Denver MSA, as illustrated by its Metropolitan Area Acquisition (“MAA”) contract with the General Services Administration. This local services contract allows federal agencies in the Denver area to “take advantage of [AT&T’s] advanced technologies, network reliability and competitive rates.”⁶⁵ A map contained on the AT&T website shows that these services are available, via the MAA contract, to federal entities throughout most of the Denver MSA.⁶⁶

AT&T is a significant provider of wireless services, and offers wholesale services to other carriers.⁶⁷ In addition, AT&T has expanded its product reach by offering its CallVantage VoIP service—which bypasses Qwest’s switched voice network—to any customer in the Denver MSA with a broadband internet connection.⁶⁸ According to GeoTel, AT&T has over [REDACTED] route miles of fiber within the Denver MSA. This fiber may be used to

⁶⁵ http://att.com/gov/contracts/maas/availability/maas_cities_den.html See Exhibit 3, Page 1

⁶⁶ *Id.*

⁶⁷ <http://www.att.com/gcn/landing-pages?pid=3308>. See Exhibit 3, Page 2.

⁶⁸ <http://www.consumer.att.com/> See Exhibit 3, Page 3.

provide a wide range of voice and data services to customers without relying on the purchase of Qwest wholesale services.⁶⁹

25. Cbeyond Communications currently provides local telephone service, high-speed Internet access, domestic and international long distance service, mobile voice and data service, and a variety of business applications, including e-mail, web hosting and voice mail. Cbeyond focuses on serving small business customers along the Colorado “Front Range” from Fort Collins to Colorado Springs, including the Denver metropolitan area.⁷⁰ Services are provided over a managed VoIP network via a broadband T-1 facility that is connected to a Cbeyond-installed Integrated Access Device (“IAD”). Voice calls travel over a dedicated IP connection—not over the public Internet—allowing Cbeyond to manage the quality of service that is provided. According to Cbeyond, its network is “the network every traditional telephone company would build if they started today,”⁷¹ which allows Cbeyond to offer:

- An integrated package of the communications tools that a small business needs – voice, high speed T-1 Internet access and IP-based applications such as e-mail, web hosting and VPN at affordable pricing.
- Advanced technology to manage available voice lines and data bandwidth over a full T-1, delivering maximum flexibility and the highest possible upload and download speeds.
- One network and one business support system to create a streamlined, seamless communications experience.⁷²

⁶⁹ GeoTel fiber route data, October 2006.

⁷⁰ <http://www.cbeyond.com/services/index.htm>; <http://www.cbeyond.com/business/services-denver.php>; and <http://www.cbeyond.net/business/maps/denver-service.htm>. See Exhibit 3, Page 4.

⁷¹ <http://www.cbeyond.com/cbeyond/cbeyond-technology-network.htm>. See Exhibit 3, Page 7.

⁷² *Id.*

Cbeyond's Denver-area growth is continuing at an impressive rate. According to Fourth Quarter 2006 Results released March 1 2007, Cbeyond's Denver market revenues grew by 17% between December 2005 and December 2006.⁷³

26. Eschelon is a major facilities-based CLEC providing services to small and enterprise business customers in a number of markets in the western U.S., including the Denver MSA.⁷⁴ In describing its operations, Eschelon states:

Eschelon Telecom, Inc. is a facilities-based competitive communications services provider of voice and data services and business telephone systems in 45 markets in the western United States. Headquartered in Minneapolis, Minnesota, the company currently employs approximately 1,400 telecommunications/Internet professionals, serves over 60,000 business customers and has in excess of 570,000 access lines in service throughout its markets in Arizona, California, Colorado, Minnesota, Montana, Nevada, Oregon, Utah and Washington.⁷⁵

Eschelon offers a broad range of voice and data services to small and enterprise business customers, including local exchange service, digital T-1 services, digital PBX trunks, long distance service, integrated voice/data services and a wide range of features.⁷⁶ Additionally, in late 2005, Eschelon introduced its "Precision FlexPak" VoIP service, which is provided over its own managed network. By June 2006, Eschelon reported that its Precision FlexPak service was exceeding sales expectations and represented 37 percent

⁷³ <http://ir.cbeyond.net/ReleaseDetail.cfm?ReleaseID=232139>. See Exhibit 3, Page 8.

⁷⁴ On March 20, 2007, Integra Telecom, Inc. announced that it has entered into an agreement to purchase Eschelon, pending governmental and shareholder approvals expected in the third quarter of 2007. At that time, Integra estimates that combined Integra/Eschelon revenues will be approximately \$700 million annually and that the combined companies will "serve an average of 20 percent of the businesses in the metropolitan areas in which they operate," which includes the Denver MSA. Since this transaction has not been finalized, this declaration treats Eschelon as a separate entity. http://www.integratelecom.com/about/news/news_releases/2007/2007-03-20_news_release.asp. See Exhibit 3, page 18.

⁷⁵ http://www.eschelon.com/about_us/section_detail.aspx?itemID=8311&catID=220&SelectCatID=220. See Exhibit 3, Page 20.

⁷⁶ <http://www.eschelon.com/voice/index.aspx> and <http://www.eschelon.com/internet/index.aspx>. See Exhibit 3, Page 22.

of the company's total lines sold.⁷⁷ In November 2006, Eschelon announced that its percentage of backhaul facilities carried over company-owned fiber had reached 52 percent, and predicted that this percentage would continue to grow as the company initiated the next phase of its network expansion.⁷⁸

27. McLeodUSA is a facilities-based CLEC providing a range of services to small and enterprise business customers in nearly 500 cities in 20 states. Based on the map posted to its website, McLeodUSA offers services to the following communities in the Denver MSA: Arvada, Aurora, Broomfield, Castle Rock, Denver, Englewood, Golden, Lakewood, Littleton, Northglenn, Parker, and Westminster.⁷⁹ McLeodUSA describes itself as a provider of "integrated solutions for:

- Traditional local and long-distance services (including VoIP);
- High-speed broadband Internet access (up to 60 Mbps);
- Data networking solutions (e.g., VPN services, facilities leasing)."

McLeodUSA's current product offerings are the result of a major business strategy shift that was announced by the company in June 2006. At that time, McLeodUSA began focusing the company's offerings around dynamic IP-based integrated voice and data broadband solutions for single and multi-location small and enterprise businesses, which it manages over "one of the largest competitive, fiber-dense networks in the nation."⁸¹ In

⁷⁷ http://www.eschelon.com/about_us/section_detail.aspx?itemID=7588&catID=6885&SelectCatID=6885. See Exhibit 3, Page 24.

⁷⁸ http://www.eschelon.com/about_us/section_detail.aspx?itemID=8311&catID=220&SelectCatID=220. See Exhibit 3, Page 20.

⁷⁹ <http://www.mcleodusa.com/CoverageArea.do>. See Exhibit 3, Page 26.

⁸⁰ <http://www.mcleodusa.com/CompanyInformation/CorporateProfile.do>. See Exhibit 3, Page 27.

⁸¹ <http://www.mcleodusa.com/InvestorRelations/PressRoom.do> - Press Release issued June 5, 2006. See Exhibit 3, Page 28.

addition to its new focus on IP integrated services, McLeodUSA stated that it was also “rapidly expanding its distribution channels and sales partners to help fuel market growth.”⁸² In October 2006, McLeodUSA introduced an expanded product suite of wholesale local voice and carrier data offerings, stating that it would leverage its “pervasive fiber-optic network” of 18,000 route miles and 650 central office collocations to provide both traditional and IP-based wholesale services.⁸³

28. Level 3 is an international communications and information services company headquartered in Broomfield, Colorado, located within the Denver MSA. Traditionally, Level 3 has operated primarily as a major “carriers’ carrier,” offering wholesale telecom services to other communications providers. However, today Level 3 also offers a wide range of communications services to small and enterprise business customers, including Internet Protocol (“IP”) services, broadband transport, collocation services, and patented Softswitch-based managed modem and voice services. Level 3 touts its scalable, cost-effective, state-of-the-art optical network as being “ideal for communications-intensive companies”. The company also asserts that “few providers own the amount of available fiber infrastructure that Level 3 owns” and that as a consequence, “few can claim to be as accommodating of future customer growth.”⁸⁴ Level 3 has dramatically increased its presence in the Denver MSA through its May 2006 acquisition of Denver-based ICG Communications, and its January 2007 acquisition of Broadwing Corporation

⁸² *Id.*

⁸³ <http://www.mcleodusa.com/InvestorRelations/PressRoom.do> - Press Release issued October 9, 2006. See Exhibit 3, Page 31.

⁸⁴ <http://www.level3.com/576.html>. See Exhibit 3, Page 34.

In announcing completion of the ICG acquisition, Level 3 offered the following description of ICG:

“ICG primarily provides transport, IP and voice services to wireline and wireless carriers, Internet service providers and enterprise customers. ICG’s network has over 2,000 metro and regional fiber miles in Colorado and Ohio and includes approximately 500 points of presence. ICG serves more than 1,600 customers.”

Level 3 further explained that the transaction would provide it with “the opportunity to further expand our footprint into areas where we see demand for our services” and noted that “ICG’s business model fits nicely with the expansion of our metropolitan services offerings.”⁸⁵

Level 3 has established a specific marketing organization, the Level 3 Business Markets Group, to focus specifically on serving the small and enterprise business markets—a strategy that has been enhanced through Level 3’s acquisition of Broadwing. Broadwing Corporation operated as a CLEC serving small and enterprise business customers in a variety of U.S. markets, including the Denver MSA. In discussing its Broadwing acquisition, Level 3 stated:

The acquisition of Broadwing is consistent with both the Level 3 wholesale market strategy as well as our more recent entry into the enterprise market. We believe the combination of Level 3 and Broadwing will create value for our investors through the elimination of duplicative network and operating costs, the addition of a solid revenue base, and a further strengthening of our financial position. Broadwing has made great strides with national enterprise customers as a result of their strong product portfolio and national sales teams. This creates an exciting opportunity for us to leverage both of these capabilities to accelerate the growth of Level 3’s Business Markets Group.⁸⁶

⁸⁵ <http://www.level3.com/newsroom/pressreleases/2006/20060531.html>. See Exhibit 3, Page 35.

⁸⁶ <http://www.level3.com/newsroom/pressreleases/2006/20061017.html>. See Exhibit 3, Page 36.

Level 3 has also partnered with Covad to deliver VoIP telecom services to the small and medium business market.” This Covad-branded service is now available to any Denver MSA customer with a broadband Internet connection, and represents a direct substitute for Qwest’s retail voice services. With its acquisition of Broadwing, Level 3 now owns and operates a 39,500 mile fiber network,” including over [REDACTED] fiber miles in Qwest wire centers in the Denver MSA.⁸⁹

29. Time Warner Telecom, headquartered within the Denver MSA in Littleton, Colorado, is a facilities-based CLEC with over 24,000 miles of fiber to serve customers in 22 states, including customers in the Denver and Colorado Springs MSAs.⁹⁰ Time Warner Telecom focuses on the small and enterprise business markets, offering a wide range of telecommunications services including business voice service, dedicated high capacity services, digital trunks, ISDN, long distance service, dedicated internet access, LAN services, etc.⁹¹ Time Warner Telecom offers its business VoIP service, branded as TW Telecom One Solution, to small and medium business PBX customers via the Time Warner Telecom metro Ethernet system in various markets in the U.S., including Denver.” In announcing results for the fourth quarter of 2006, Time Warner Telecom

⁸⁷ <http://www.level3.com/newsroom/pressreleases/2006/20060912a.html>. See Exhibit 3. Page 39.

⁸⁸ http://www.level3.com/about_us/index.html. See Exhibit 3. Page 40.

⁸⁹ Source: GeoTel. October 2006.

⁹⁰ http://www.twtelecom.com/about_us/networks.html. See Exhibit 3. Page 42.

⁹¹ http://www.twtelecom.com/cust_solutions/sm_med_biz_sol.html. See Exhibit 3, Page 44

⁹² Time Warner Telecom press release: *Time Warner Telecom Launches VoIP-Based Business Solutions Over Metro Ethernet*. February 23, 2005. See Exhibit 3. Page 45.

reported that it had grown enterprise business revenue by 43% year over year (including “organic growth” of 16%, with the remainder attributable to its acquisition of Xspedius Communications) and had grown data and Internet revenue by 40% year over year (including “organic growth” of 30%).⁹³ Time Warner Telecom also provides wholesale services to other telecom carriers, as described later in this declaration.

30. XO Communications is a significant provider of retail business and wholesale telecommunications services in the Denver MSA. XO describes itself as a “full-service provider of communications services for small and growing businesses, larger enterprises and carriers” that owns “a wealth of local fiber, DSL, fixed wireless, data networking, Internet and long-haul network assets.”⁹⁴ Denver is among the 75 major U.S. metropolitan markets served by XO, and represents a major network node within XO’s 18,000 mile national fiber network.^{95,96} XO announced in October 2006 that it had aligned its businesses into two major segments—XO Business Services and XO Carrier Services—to reflect its focus on both retail and wholesale customers.⁹⁷ XO provides a wide range of local services for retail business customers, including basic voice business lines, business trunks, Centrex service, voice messaging, ISDN-PRI, directory assistance, foreign exchange service, long distance services, etc.⁹⁸ In addition to its traditional voice services, XO actively promotes its VoIP-based services provided via its XOptions Flex

⁹³ http://www.twtelecom.com/Documents/Announcements/News/2007/TWTC_q4_06_.pdf. See Exhibit 3, Page 47.

⁹⁴ <http://www.xo.com/about/ourstory/index.html>. See Exhibit 3, Page 60.

⁹⁵ http://telephonyonline.com/ftp/marketing/comptel_xo_wholesale_100906/. See Exhibit 3, Page 61.

⁹⁶ http://www.xo.com/about/network/maps/complete_normal.html. See Exhibit 3, Page 62.

⁹⁷ http://telephonyonline.com/ftp/marketing/comptel_xo_wholesale_100906/. See Exhibit 3, Page 61.

⁹⁸ <http://www.xo.com/products/smallgrowing/voice/local/index.html>. See Exhibit 3, Page 63.

product line.⁹⁹ In addition, Nextlink, XO's wireless broadband service division, now offers a wide range of wireless broadband private line services, including DS3, OC-3 and OC-12 services, to enterprise and wholesale customers in major U.S. markets including Denver. These offerings compete directly with high capacity services offered by Qwest.¹⁰⁰

31. In the Denver MSA, the CLECs described above are squarely focused on delivering competitive local exchange services to an increasing share of retail customers, while at the same time *reducing their reliance on UNEs purchased from Qwest*. The CLECs are realizing this goal by self-provisioning network facilities (either by wireline or wireless means), purchasing network capacity from other carriers (described later in this declaration), or by purchasing finished services such as Qwest Platform Plus or Qwest Local Services Platform from Qwest via business-to-business contractual arrangements.

IV. SPECIAL ACCESS.

32. Special Access service can be utilized as a substitute for unbundled network elements. In fact, many landline-based competitors are purchasing Special Access services from Qwest today in order to serve customers in the Denver MSA. As of December 2006, competitors purchased Special Access circuits representing over [REDACTED]

⁹⁹ <http://www.xo.com/products/smallgrowing/integrated/>. See Exhibit 3, Page 65.

¹⁰⁰ http://www.nextlink.com/livefiles/ServiceGroups/1/Service_Providers.pdf. See Exhibit 3, Page 66.

██████████ Voice Grade Equivalent ("VGE) lines in the Denver MSA.¹⁰¹ Of these VGEs, over ██████████ are based on DS1 Special Access, almost ██████████ are based on DS3 Special Access, and the remainder are based on OCn Special Access services. While Qwest does not have direct knowledge of the services CLECs provide to their customers via Special Access services, the fact that a significant proportion of Special Access services sold by Qwest to CLECs in the Denver MSA are at a DS1 and above level suggests that they are being utilized to serve enterprise customers, who typically have the need for a large number of access lines and/or telecommunications bandwidth capacity. The number of Voice Grade Equivalent circuits provided by competitors using Special Access services in the Denver MSA exceeds the number of VGE circuits provided by CLECs using unbundled network elements, Qwest Platform Plus and resale combined. In addition, revenues for Qwest Special Access provided to competitors in the Denver MSA for the month of August, 2006, were over ██████████. It is clear that carriers are utilizing Special Access services very broadly in providing telecom services in the Denver MSA.

33. It is also worth noting that, while Special Access is provided by Qwest throughout the Denver MSA, competitive fiber has also been placed in most of these wire centers, as discussed in the following section of this declaration. This fiber can be used as an alternative to the purchase of Qwest Special Access services. In fact, over ██████████ of

¹⁰¹ VGEs represent equivalent voice channels; for example, a DS1 is equivalent to 24 voice channels, a DS3 is equivalent to 672 voice channels, an OC3 is equivalent to 2016 voice channels, and an OC12 is equivalent to 8064 voice channels. Special Access data is drawn from Qwest's wholesale tracking systems and reflects data vintage December 2006.

the Special Access VGEs in the Denver MSA are in wire centers that also have competitive fiber in place.

V. FIBER-BASED COMPETITORS.

34. A significant amount of fiber optic cable has been placed by competitive service providers in the Denver MSA that can be used to bypass Qwest's network. According to GeoTel,¹⁰² almost [REDACTED] miles of fiber (excluding fiber owned by Qwest and Qwest's affiliates) have been placed in the Denver MSA, and this fiber is owned by approximately 20 unaffiliated entities.¹⁰³ Based on the 2006 GeoTel data, at least one fiber-based competitor has facilities in [REDACTED] of Qwest's wire centers in the Denver MSA, and these wire centers contain [REDACTED] of Qwest's retail residential lines and [REDACTED] of Qwest's retail business lines in the MSA. In addition, non-Qwest fiber is now being used to serve almost [REDACTED] buildings in the Denver MSA.¹⁰⁴

35. According to the GeoTel data, some of the most significant alternative telecom fiber providers in the Denver MSA are [REDACTED]

[REDACTED]

¹⁰² According to GeoTel: "GeoTel Communications, Inc. is the leading provider of telecommunications infrastructure data in a geographic information system (GIS). GeoTel's unique business strategy implements and converges the mapping of telecommunications fiber and other telecommunications infrastructure with GIS technologies. These two items integrated into one digital data set gives leverage and insight into the competitive metropolitan fiber optic landscape across America." http://www.cmcstore.com/productcart/pc/viewCat_h.asp?idCategory=66.

¹⁰³ GeoTel continually works to update its data regarding fiber-based competitors and provides updated data approximately every six months. However, GeoTel does not possess complete data regarding each fiber-based competitor, and the data reported above is therefore likely understated. GeoTel data underlying the numbers above was provided to Qwest in October 2006.

¹⁰⁴ Source: GeoTel. October 2006.

████████████████████¹⁰⁵ Confidential Exhibit 4 shows the known fiber routes for 20 known entities with competitive fiber facilities in the Denver MSA. These fiber facilities can be used by Qwest's competitors to provide services that directly compete with a number of Qwest mass market and enterprise services, such as local exchange service, private line service, ISDN, local area networks, frame relay service, long distance services, etc. In this case, competitive services can be provided *without using the Qwest network*.

¹⁰⁵ *Id.*

VI. WIRELESS SERVICE COMPETITION.

36. Wireless phones are now widely accepted by business and residential customers alike for voice telephony. In addition, to bring additional functionality to their services and to attract new customers, wireless providers are now augmenting their services with data applications such as dial-up wireless Internet access, text messaging and image transmission. The customer shift toward wireless substitution in Colorado can be observed by reviewing the FCC's most recent Local Telephone Competition Report.¹⁰⁶ The FCC's data shows that total incumbent and CLEC wirelines in Colorado decreased from 3.092 million as of June 2000 to 2.805 million as of June 2006.¹⁰⁷ In contrast, wireless subscriber counts in Colorado grew from 1.655 million to 3.442 million between June 2000 and June 2006—an increase of 1.787 million or 108%. The number of wireless subscribers in Colorado now exceeds the combined number of ILEC and CLEC wireline access lines by a wide margin.¹⁰⁸ Clearly, wireless services are outpacing traditional wireline services in fulfilling many Coloradans' telecommunications needs.

37. In its most recent Commercial Mobile Radio Service ("CMRS") competition report,¹⁰⁹ the FCC provides data regarding the percentage of households that have "cut the

¹⁰⁶ *Local Telephone Competition: Status as of June 30, 2006*, Industry Analysis and Technology Division, Wireline Competition Bureau. January 2007.

¹⁰⁷ *Id.*, Tables 9 and 10. This decrease occurred despite the fact that CLEC lines increased from 204,608 in June 2000 to 528,727 in June 2006.

¹⁰⁸ *Id.*, Table 14.

¹⁰⁹ Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, "Tenth Report, September 29, 2006.

cord” (i.e., have disconnected wireline telephone service and now rely exclusively on wireless service for their voice telecommunications needs). The FCC states:

Wireless substitution has grown significantly in recent years. According to a 2005 National Health Interview Survey (“IS), 7.8 percent of adults lived in households with only wireless phones in the second half of 2005, up from 5.5 percent in the first half of 2004 and 3.5 percent in the first half of 2003.¹¹⁰

The FCC’s data clearly show a significant increase in the proportion of wireless subscribers who have “cut the cord,” and there is no sign that this trend is abating, but rather, it is continuing its inexorable upward pace—driven by the omnipresence, increasing functionality and affordable prices of wireless telephones. In fact, the National Center for Health Statistics—the research source for the data relied upon by the FCC to assess wireless substitution—recently released an updated report showing that the proportion of households that have “cut the cord” has increased to 9.6% as of June 2006, continuing the steady upward trend observed since 2003.¹¹¹ However, this data tells only part of the story. In many instances, subscribers remove a second landline in favor of wireless service and/or shift a significant amount of telephone usage to their wireless service. In each of these instances, demand for Qwest wireline telephone service is reduced, even though the customers have not yet disconnected their wireline telephone service entirely. The FCC states:

Even when not “cutting the cord” completely, consumers appear increasingly to choose wireless service over traditional wireline service, particularly for certain uses. For example, according to one analyst, customers in nearly a third of American households make at least half their long distance calls at home from their cell phones rather than from their landlines. In the early 2006 survey of cellphone users described above, an

¹¹⁰ *Id.*, Page 89, ¶205.

¹¹¹ <http://www.cdc.gov/nchs/products/pubs/pubd/hestats/wireless2006/wireless2006.htm>. See Exhibit 5, Page 1

additional 42 percent of cellphone users said that they also had a landline phone, but that they used their cellphones “most.”¹¹²

This data provides undeniable evidence that wireless service subscribers are using wireless service as a direct substitute for traditional wireline telephone services.

38. Other independent experts that have studied the phenomenon of wireless substitution echo the FCC’s conclusions. For example, the Yankee Group reports that “51% of local calls and 68% of long distance calls have been replaced by wireless.”¹¹³ In October 2006, Telephia released results of its primary research conducted during Second Quarter 2006 showing the rate of wireless substitution in large metropolitan areas in the United States, including the Denver metropolitan area. Telephia found that 11.3% of the survey respondents in the Denver area reported that they had cut the cord—a percentage that translates to over 119,000 Denver area households.¹¹⁴ In short, there is no evidence that the rate of substitution of wireless service for traditional wireline service is diminishing. Rather, all evidence demonstrates that such substitution will continue to increase at a robust rate.

39. Competitive wireless service is now available to the vast majority of customers in Qwest’s Denver MSA service territory from at least one (and usually several) of the major wireless carriers, including Sprint PCS, T-Mobile, Verizon, AT&T (f/k/a Cingular) and

¹¹² Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services. Tenth Report, September 29, 2006, P. 90, ¶206.

¹¹³ 2006 *U.S. Technologically Advanced Family Survey*, The Yankee Group. September 2006.

¹¹⁴ http://www.telephia.com/html/documents/TotalCommunications_000.pdf, October 18, 2006. See Exhibit 5. Page 4.

Cricket.¹¹⁵ Exhibit 5, page 7, displays the wireless coverage areas for the carriers serving the Denver MSA, based on a conservative mapping of a five mile coverage footprint around each known cellular tower.¹¹⁶ Wireless services now provide functionality nearly identical to wireline service from the perspective that both provide switched voice communication capability, access to directory assistance, access to popular calling features (such as call waiting, three-way calling, caller I.D., voice messaging, etc.), access to operator services, number portability (e.g., customers may now port a wireline telephone number to a wireless carrier and vice versa) and access to E911 service.

40. Wireless broadband (“WiFi”) service represents another form of radio-based competition that is now actively deployed in many communities within Qwest’s Denver MSA service territory.¹¹⁷ According to Travel Island, which identifies active public WiFi locations for travelers, WiFi service is now available in over 83 locations within the Denver MSA, including locations in Arvada, Aurora, Broomfield, Castle Rock, Denver, Englewood, Evergreen, Glendale, Golden, Greenwood Village, Highlands Ranch, Lakewood, Littleton, Lone Tree, Parker, Thornton and Westminster.¹¹⁸ In any of these locations, users can utilize a WiFi connection to access the internet and use VoIP services to make and receive telephone calls without reliance on Qwest’s local network. In other words, WiFi services represent yet another physical “communications pipe” into homes

¹¹⁵ Other smaller wireless carriers, such as Alltel, also serve the Denver MSA (see http://www.alltel.com/personal/wireless/plans/nf_coverage_map.html). See Exhibit 5, Page 6.

¹¹⁶ Depending on local conditions, cellular reception is viable at distances as great as 30 miles from the cellular tower (source: http://en.wikipedia.org/wiki/Cell_site). Thus, for example, customers in Bailey Colorado that reside outside the 5 mile radius can still purchase wireless services. Mapping based on 2006 data obtained by research firm GeoResults. See Exhibit 5, Page 7.

¹¹⁷ WiFi is a precursor to WiMAX service, which will have a much greater coverage area around each transmitter

¹¹⁸ http://www.travel-island.com/travel/wireless/us_Colorado.html. See Exhibit 5, Page 8